UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,429	12/15/2003	Vyacheslav Barsuk	END920030054US1	3436

26502	7590	09/20/2006

IBM CORPORATION
IPLAW IQ0A/40-3
1701 NORTH STREET
ENDICOTT, NY 13760

EXAMINER
BROWN, MICHAEL J

ART UNIT	PAPER NUMBER
2116	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 June 2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-22</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-22</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>15 December 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by

Guarraci et al.(US PGPub 2004/0267918).

        As to claim 1, Guarraci discloses a method for performing a remote power

reset(see paragraph 0035, lines 2-5) at a remote server(conventional computer

520, see Fig. 5) through a network connection(local area connection(LAN) 551,

see Fig. 5), comprising pinning a power reset procedure to memory(system

memory 522, see Fig. 5) at the remote server, and continuously running the

power reset procedure to listen for a call to initiate the power reset in response

thereto.

        As to claim 2, Guarraci discloses the method wherein the listening for a

call further comprises listening for a Request TCP/IP packet to initiate the power

reset(see wide area network 552, Fig. 5).

        As to claim 3, Guarraci discloses the method wherein the listening for a

call further comprises listening for a call via a network connection(see local area

network 551, Fig. 5).

As to claim 4, Guarraci discloses the method wherein the listening for a call further comprises listening for a call via a network connection(see local area network 551, Fig. 5).

As to claim 5, Guarraci discloses the method wherein the listening for a call further comprises listening to a predetermined TCP/IP port for a Request TCP/IP packet specifying the power reset procedure(see wide area network 552, Fig. 5).

As to claim 6, Guarraci discloses the method further comprising receiving at a the predetermined TCP/IP port the Request TCP/IP packet and initiating the power reset procedure pinned in the memory of the remote server in response to receipt of the Request TCP/IP packet(see wide area network 552, Fig. 5).

As to claim 7, Guarraci discloses the method wherein the initiating the power reset further comprises performing a system call to reboot or power off the remote server(see paragraph 0033, lines 12-14).

As to claim 8, Guarraci discloses the method wherein the remote server hangs as result of running out of virtual memory, and wherein the initiating the power reset further comprises unhanging the remote server using the power reset procedure(see paragraph 0030, lines 1-11).

As to claim 9, Guarraci discloses a method for initiating a remote power reset(see paragraph 0035, lines 2-5) at a remote server(conventional computer 520, see Fig. 5) through a network connection(local area connection(LAN) 551,

see Fig. 5), comprising determining whether the remote server should perform a

power reset procedure that is pinned to memory(system memory 522, see Fig. 5)

and running at the remote server, and sending a call to the remote server to

initiate the power reset procedure pinned to memory of the remote server.

As to claim 10, Guarraci discloses a remote server(conventional computer

520, see Fig. 5), comprising a memory(system memory 522, see Fig. 5) for

storing program instructions(computer executable instructions, see paragraph

0046, line 3), a power reset procedure(see paragraph 0035, lines 2-5) being

pinned to the memory, and a processor(processing unit 521, see Fig. 5)

configured according to the program instructions for running the power reset

procedure to listen for a call to initiate a power reset in response thereto.

As to claim 11, Guarraci discloses the remote server wherein the call

comprises a Request TCP/IP packet for initiating the power reset(see wide area

network 552, Fig. 5).

As to claim 12, Guarraci discloses the remote server wherein processor

listens for the call via a network connection(see local area network 551, Fig. 5).

As to claim 13, Guarraci discloses the remote server wherein the

processor listens for a call by listening to a predetermined TCP/IP port for a

Request TCP/IP packet specifying the power reset procedure(see wide area

network 552, Fig. 5).

As to claim 14, Guarraci discloses the remote server wherein the

processor receives the Request TCP/IP packet from predetermined TCP/IP port

and initiates the power reset procedure pinned in the memory in response to the

Request TCP/IP packet(see wide area network 552, Fig. 5).

As to claim 15, Guarraci discloses the remote server wherein the

processor initiates the power reset by performing a system call to reboot or

power off the remote server(see paragraph 0033, lines 12-14).

As to claim 16, Guarraci discloses a system for performing a remote

power reset(see paragraph 0035, lines 2-5) at a remote server(conventional

computer 520, see Fig. 5) through a network connection(local area

connection(LAN) 551, see Fig. 5), comprising a host(remote computer 549b, see

Fig. 5), the network connection, and the remote server, coupled to the host

through the network connection, wherein the host determines whether the remote

server should perform a power reset procedure that is pinned to memory(system

memory 522, see Fig. 5) and running at the remote server and sends a

call(computer executable instructions, see paragraph 0046, line 3) to the remote

server to initiate the power reset procedure pinned to memory of the remote

server, and wherein the remote server listens for the call, receives the call and

initiates the power reset procedure pinned in the memory of the remote server in

response to the call.

As to claim 17, Guarraci discloses a host computer(conventional computer

520, see Fig. 5) system, comprising a memory for storing program

instructions(computer executable instructions, see paragraph 0046, line 3), and a

processor(processing unit 521, see Fig. 5), configured according to the program

instructions for determining whether a remote server should perform a power

reset procedure(see paragraph 0035, lines 2-5) that is pinned to memory(system

memory 522, see Fig. 5) and running at the remote server and sending a call to

the remote server to initiate the power reset procedure at the remote server.

As to claim 18, Guarraci discloses a remote server(conventional computer

520, see Fig. 5), comprising means(system memory 522, see Fig. 5) for storing

program instructions(computer executable instructions, see paragraph 0046, line

3), a power reset procedure(see paragraph 0035, lines 2-5) being pinned to the

memory, and means(processing unit 521, see Fig. 5) configured according to the

program instructions for running the power reset procedure to listen for a call to

initiate a power reset in response thereto.

As to claim 19, Guarraci discloses a system for performing a remote

requested action, comprising host means(conventional computer 520, see Fig. 5)

for running applications, network means(local area connection(LAN) 551, see

Fig. 5) for providing network connections, and remote means(remote computer

549b, see Fig. 5), coupled to the host means via the network means, wherein the

host means determines whether a remote means should perform a power

reset(see paragraph 0035, lines 2-5) means that is pinned to means(system

memory 522 and processing unit 521, see Fig. 5) for storing and running at the

remote means, the host means sending a call(computer executable instructions,

see paragraph 0046, line 3) to the remote means to initiate the power reset

means at the remote means, and wherein the remote means listens for the call,

receives the call and initiates the power reset means at the remote means in response to the call.

As to claim 20, Guarraci discloses a host computer system(conventional computer 520, see Fig. 5), comprising means(system memory 522, see Fig. 5) for storing program instructions(computer executable instructions, see paragraph 0046, line 3), and means configured according to the program instructions provided by the means for storing for determining whether a remote means(remote computer 549b, see Fig. 5) needs to perform a remote power reset(see paragraph 0035, lines 2-5) means that is pinned to means(system memory 522 and processing unit 521, see Fig. 5) for storing at the remote means and running on the remote means and sending a call to the remote means to initiate the power reset means at the remote means.

As to claim 21, Guarraci discloses a program storage device readable by a computer(conventional computer 520, see Fig. 5), the program storage device tangibly embodying one or more programs of instructions(computer executable instructions, see paragraph 0046, line 3) executable by the computer to perform a method for performing a remote power reset(see paragraph 0035, lines 2-5) at a remote server(remote computer 549b, see Fig. 5) through a network connection(local area connection(LAN) 551, see Fig. 5), the method comprising pinning a power reset procedure to memory(system memory 522, see Fig. 5) at a remote server, and continuously running(system memory 522 and processing unit 521, see Fig. 5) the power reset procedure to listen for a call to initiate a

power reset in response thereto.

As to claim 22, Guarraci discloses a program storage device readable by

a computer(conventional computer 520, see Fig. 5), the program storage device

tangibly embodying one or more programs of instructions(computer executable

instructions, see paragraph 0046, line 3) executable by the computer to perform

a method for performing a remote power reset(see paragraph 0035, lines 2-5) at

a remote server(remote computer 549b, see Fig. 5) through a network

connection, the method comprising determining whether a remote server should

perform a power reset procedure that is pinned to memory(system memory 522,

see Fig. 5) and running(system memory 522 and processing unit 521, see Fig. 5)

at the remote server, and sending a call to the remote server to initiate the power

reset procedure pinned to memory of the remote server.

Response to Arguments

3.   Applicant's arguments filed 6/26/2006 have been fully considered but they are

not persuasive. Applicant argues that Guaracci fails to disclose the feature of "pinning a

power reset procedure to memory at a remote server". Examiner disagrees as

Guaracci discloses providing the basic remote management capabilities, such as the

ability to cycle power or reset(see paragraph 0035, lines 3-4) to a remote

server(headless server 110, see Fig. 1).

Applicant argues that Guaracci does not qualify as prior art since the submitted declaration established the conception of the claimed invention before the filing date of Guaracci, June 30, 2003.

The declaration filed on 6/26/2006 under 37 CFR 1.131 to overcome the rejection of claims 1-22 over Guaracci under 102(e) as set forth in the last office action on 5/8/2006 has been considered but it is ineffective because it fails to establish reduction to practice prior to the date of reference.

Applicant attempts to establish prior invention by showing conception of the invention prior to June 30, 2003, the effective filing date of Guaracci.

The evidence(i.e. source code) is insufficient to establish a conception of the invention prior to the effective date of the Guaracci reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The exhibit submitted by applicant does not provide enough basis about how it supports the claimed invention.

Applicant bears the burden of giving a ***clear explanation*** (within the declaration) of how the exhibits support the reduction of practice of the claimed invention. See MPEP 2138.04 below:

"[C]onception is established when the invention is made sufficiently clear to enable one skilled in the art to reduce it to practice without the exercise of extensive experimentation or the exercise of inventive skill." *Hiatt v. Ziegler*, 179 USPQ 757, 763 (Bd. Pat. Inter. 1973). Conception has also been defined as a disclosure of an invention which enables one skilled in the art to reduce the invention to a practical form without "exercise of the inventive faculty." *Gunter v. Stream*, 573 F.2d 77, 197 USPQ 482 (CCPA 1978). See also *Coleman v. Dines*, 754 F.2d 353, 224 USPQ 857 (Fed. Cir. 1985) (It is settled that in establishing conception a party must show possession of every feature recited in the count, and that every limitation of the count must have been known to the inventor at the time of the alleged conception. Conception must be proved by corroborating evidence.); *Hybritech Inc. v. Monoclonal Antibodies Inc.*, 802 F. 2d 1367, 1376, 231 USPQ 81, 87 (Fed. Cir. 1986) (Conception is the "formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention, as it is hereafter to be applied in practice."); *Hitzeman v. Rutter*, 243 F.3d 1345, 58 USPQ2d 1161 (Fed. Cir. 2001) (Inventor's "hope" that a genetically altered yeast would produce antigen particles having the particle size and sedimentation rates recited in the claims did not establish conception, since the inventor did not show that he had a "definite and permanent understanding" as to whether or how, or a reasonable expectation that, the yeast would produce the recited antigen particles.).

Conclusion

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

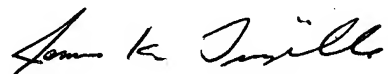extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (571)272-5932. The examiner can normally be reached on Monday-Thursday from 7:00am to 5:30pm(EST).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIRS) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications are available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

Michael J. Brown
Art Unit 2116

JAMES K. TRUJILLO
PRIMARY EXAMINER
TC 2100